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17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 HOUTAN PETROLEUM, INC.) CASE NO. CV 07-05627 SC
20 Plaintiff,)
21 v.) **JOINT STATEMENT OF THE CASE TO BE
READ TO THE JURY**
22 CONOCOPHILLIPS COMPANY, a Texas)
Corporation and DOES 1 through 10,) Trial Date: February 11, 2008
23 Inclusive) Time: 10:00 a.m.
24 Defendants.) Courtroom: 1
Before: Hon. Samuel Conti
25 _____

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27 Plaintiff and Counter-Defendant Houtan Petroleum, Inc. ("Houtan Petroleum") and Defendant
28 and Counter-Plaintiff ConocoPhillips Company ("ConocoPhillips") hereby jointly propose the

1 following agreed upon brief statement of the case to be read to the jury prior to trial.¹

2 Houtan Petroleum operates a motor fuel station at 101 E. El Camino Real, Mountain View,
 3 California. Prior to October 31, 2007, Houtan Petroleum operated the station as a Union 76 branded
 4 franchisee pursuant to a sublease with ConocoPhillips. ConocoPhillips is the owner of the Union 76
 5 brand and trademark. ConocoPhillips also owns the equipment (such as the fuel pumps, tanks and
 6 other equipment) and improvements (such as the buildings and canopies) at the station.
 7 ConocoPhillips does not own the land on which the station is located, but leased it from a third-party
 8 named V.O. Limited Partners.

9 ConocoPhillips terminated its franchise with Houtan Petroleum effective October 31, 2007
 10 due to that fact that its lease with V.O. Limited Partners expired. Since November 1, 2007, Houtan
 11 Petroleum has been operating the station pursuant to a new lease directly with the landowner, V.O.
 12 Limited Partners

13 Motor fuel station franchises are governed by a federal law called the Petroleum Marketing
 14 Practices Act or the "PMPA" which contains specific provisions for the steps a franchisor must take
 15 when a petroleum franchise agreement is terminated. Plaintiff contends that ConocoPhillips violated
 16 provisions of this law when it terminated the parties' franchise agreement and that Houtan Petroleum
 17 suffered damages as a result thereof. ConocoPhillips contends that the franchise agreement itself
 18 included a notification of franchise termination that complied with the requirements of the PMPA.

19 ConocoPhillips contends that the parties' sublease and franchise agreement could not
 20 continue because ConocoPhillips no longer has the legal right to sublease the property to Houtan
 21 Petroleum. ConocoPhillips also contends that because Houtan Petroleum is continuing to operate the
 22 station, and has never stopped operating the station, it has not suffered, and could not have suffered,
 23 any damages.

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25 1 For the reasons set forth in ConocoPhillips' motion to strike Plaintiff's jury demand (Docket
 26 No. 48), ConocoPhillips contends that Plaintiff's claims for relief must be tried to the Court, not a
 27 jury. Accordingly, it may be necessary for the parties to revise this proposed joint statement after
 28 the pretrial conference when the parties know which issues are to be tried, and whether any such
 issues are triable to a jury. Additionally, for the reasons stated in Houtan Petroleum's Motion to
 Dismiss ConocoPhillips' Counterclaims based on preemption by the PMPA (Docket No. 49 &
 50), the portion of this Joint Statement of the Case referring to ConocoPhillips' Counterclaims
 may need to be either deleted or revised, depending on the Court's ruling of such Motion.

1 ConocoPhillips has also brought claims against Houtan Petroleum. In these claims,
2 ConocoPhillips claims that Houtan Petroleum has wrongfully refused to return ConocoPhillips'
3 property (the equipment and improvements at the station). ConocoPhillips contends that under the
4 parties' franchise agreement, Houtan Petroleum was required to return this property to
5 ConocoPhillips upon expiration or termination of the franchise agreement. Houtan Petroleum does
6 not deny that it has retained this property, but contends that it was entitled under the law to do so.

7 Dated: February 1, 2008

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A Professional Law Corporation

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11 Gennady L. Lebedev, Esq.
12 Attorneys for Plaintiff, Houtan Petroleum, Inc.

13 Dated: February 1, 2008

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